IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.R. NO. 2580 OF 2007
DECIDED ON 14.05.2007

Smt. Guddi Devi and another

Petitioners

VERSUS

Smt. Saroj Sharma

...Respondent

CORAM : HON'BLE MR. JUSTICE A. N. JINDAL.

Present: Mr. S. S. Dinarpur, Advocate,
for the petitioners.

A.N. JINDAL, J.

This petition under Article 227 of the Constitution of India has been filed to challenge the order dated 27.04.2007 (Annexure P-4) passed by Additional Civil Judge (Senior Division), Sirsa, vide which he had dismissed the objections dated 21.04.2007 filed by the petitioners before the Executing Court.

The factual matrix in the background of the case is that the respondent Smt. Saroj Sharma filed a suit under Section 6 of the Specific Relief Act seeking possession of about 20 square yards of area, as fully described in the heading of the plaint and also sought injunction against the petitioners from occupying any part of land shown as

ADEFGB in the site plan. The petitioners (being defendants in lower Court) contested the aforesaid suit. Ultimately, the said suit was dismissed on 02.09.2005 by Additional Civil Judge (Senior Division), Sirsa. However, Additional District Judge, Sirsa vide judgment dated 28.04.2006 allowed the appeal of the respondent and decreed the suit. The regular second appeal filed by the petitioners before the Hon'ble High Court resulted into dismissal on 22.09.2006. Thereafter the respondents filed an execution in which the Executing Court issued warrants of possession in respect of the land covered by the decree. When the bailiff, who went to execute the warrants, reported that there was construction over it and he reported that the warrants of possession could not be executed on account of construction over the area. Thereafter, the Court vide order dated 27.04.2007, on the report of bailiff recommended to carry out demolition for removal of malwa and deliver the possession to the respondent.

The prime question involved in this petition is "Whether the affixtures on the land would go with the land involved in a decree, which is executed ? In this connection, it may be observed that by a sale or transfer of the land in any manner, any affixtures thereon would go with the land unless stipulated otherwise. Certainly if any construction exists or has been raised, during the pendency of the case over the land by the judgment debtors would not stand in the way of execution of the decree for possession. The said construction

will be raised by a person in its possession at his own risk and costs and at the time when he is divested of the said land under a lis decided against him, then certainly the Decree Holder will be entitled to earn the fruits of the decree by taking the possession of such property after the removal of malwa, for which Judgment Debtor will have no other claim but to ask for costs of any improvement, that too, after he surrenders the possession and that too, only if it is agreed to between the parties.

Consequently, it appears that the trial Court was justified in issuing warrants of possession while demolishing the constructed area. As such, this revision petition, being unmerited, is hereby dismissed.

MAY 14, 2007 **(A.N. JINDAL)**
shalini **JUDGE**